United Nations CAT/C/NZL/CO/6

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
2 June 2015

Original: English

Committee against Torture

Concluding observations on the sixth periodic report of New Zealand*

1. The Committee against Torture considered the sixth periodic report of New Zealand (CAT/C/NZL/6) at its 1292nd and 1295th meetings, held on 21 and 22 April 2015 (see CAT/C/SR.1292 and 1295), and adopted, at its 1312nd and 1314th meetings, held on 5 and 6 May 2015, the following concluding observations.

A. Introduction

2. The Committee welcomes the interactive dialogue held with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

3. The Committee welcomes the State party's ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

4. The Committee also welcomes the following legislative and administrative changes in areas of relevance to the Convention:

(a) Amendments to family court legislation, to enable resolutions to be made faster and in a more fluid manner;

(b) The introduction of police safety orders to protect women and their families when the police cannot arrest someone for family violence owing to insufficient evidence;

(c) The implementation of the Immigration Act 2009, which entered into force on 29 November 2010 and prohibits the expulsion of persons to a place where they are at risk of torture and limits the situations in which asylum seekers may be detained;

(d) The enactment of the Immigration Amendment Act 2013, which gives agencies the time needed to make enquiries into the backgrounds of groups of individuals, pending decisions on refugee or protection claims;

* Adopted by the Committee at its fifty-fourth session (20 April-15 May 2015).

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(e) The enactment of the Victims of Crime Reform Bill, which aims to enhance victims' rights and role in criminal justice processes and improve the responses of government agencies to victims of crime;

(f) The enactment of the Vulnerable Children Act 2014 with new measures to protect children.

5. The Committee takes note of the legislative initiatives taken in areas of relevance to the Convention, including the introduction of a bill to establish victims' orders against violent offenders and reduce the likelihood that victims have unwanted contact with their perpetrators, and encourages their adoption.

6. The Committee welcomes the efforts of the State party to give effect to the Convention, including through:

(a) The issuance of the New Zealand Children's Action Plan for vulnerable children of October 2012;

(b) The adoption, in 2013, of a broader definition of trafficking that includes the element of "exploitative purpose";

(c) The establishment, in December 2014, of a ministerial group on family and sexual violence jointly led by the Minister of Justice and the Minister of Social Development.

7. The Committee notes with appreciation the existence of a vibrant civil society that contributes significantly to the monitoring of torture and ill-treatment, thereby facilitating the effective implementation of the Convention in the State party.

C. Principal subjects of concern and recommendations

Incorporation of the Convention in national legislation

8. Bearing in mind its previous concluding observations (see CAT/C/NZL/CO/5, para. 4), the Committee remains concerned that the Convention has not been fully incorporated into domestic law. The Committee notes that judicial decisions make little reference to international human rights instruments, including the Convention (art. 2).

The Committee reiterates its previous concluding observations and recommends that the State party:

(a) **Enact comprehensive legislation to incorporate into domestic law the provisions of the Convention;**

(b) **Strengthen the current mechanisms to ensure the compatibility of domestic law with the Convention;**

(c) **Organize training programmes for the judiciary on the provisions of the Convention and the jurisprudence of the Committee.**

National preventive mechanism

9. The Committee welcomes the work of the five designated institutions forming the national preventive mechanism, which are coordinated by the New Zealand Human Rights Commission. However, it notes that the Children's Commissioner and the Independent Police Conduct Authority have not received sufficient resources and that the number of staff is inadequate to enable these bodies to fulfil their mandate (art. 2).

The State party should strengthen the national preventive mechanism and the five entities composing it by increasing without delay the funding available and ensure

that the five entities are staffed with an appropriate number of personnel. The State party should also support the mechanism in developing and maintaining a collective identity through, inter alia, joint visits and joint public reports, harmonized working methods, shared expertise and enhanced coordination.

Independent Police Conduct Authority

10. The Committee is concerned about the mandate of the Independent Police Conduct Authority, which does not allow the institution to fully investigate and initiate the prosecution of perpetrators. The Committee is also concerned that the law leaves it up to the police to initiate investigations on itself, which raises questions about the independence of such investigations.

The State party should ensure that the Independent Police Conduct Authority is equipped with a broader mandate and full independence in order to investigate promptly, effectively and impartially all reports of violence. In particular, such investigations should not be undertaken by or under the authority of the police or military, but by an independent body.

Violence against women

11. While welcoming the measures adopted by the State party to prevent and combat violence against women (see paras. 5 and 6 (d) above), the Committee notes with concern reports on the persistence of violence against women and, particularly, its disproportionate occurrence against Maori women. The Committee is particularly concerned at information received that, while 90 per cent of cases of sexual violence remain unreported, statistics also show that the number of applications for safety orders have decreased since 2010, even though the number of family violence investigations have increased over the same period. Moreover, the Committee is concerned at the lack of proper funding for specialist sexual violence support services that reflect the diversity in the States party's communities (arts. 2, 12-14 and 16).

In the light of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the State party should redouble its efforts to prevent and combat all forms of violence against women throughout its territory by, inter alia:

(a) **Taking the measures necessary to encourage and facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them, including by ensuring that education professionals, health-care providers and social workers are fully familiar with relevant legal provisions, are trained to recognize signs of violence against women and are capable of complying with their obligation to report cases;**

(b) **Ensuring the effective enforcement of the existing legal framework by promptly, effectively and impartially investigating all reports of violence and prosecuting and punishing perpetrators in accordance with the gravity of their acts;**

(c) **Strengthening public awareness-raising activities to combat violence against women and gender stereotypes;**

(d) **Increasing its efforts to combat violence against indigenous women;**

(e) **Guaranteeing in practice that all victims benefit from protection and have access to adequately funded medical and legal aid, psychosocial counselling and social support schemes;**

(f) **Removing the cultural and financial barriers to accessing protection orders by removing or reducing the associated costs;**

(g) **Developing and implementing a comprehensive national sexual violence prevention strategy by further intensifying community-based approaches to combating violence against women, with the involvement of all stakeholders.**

Trafficking in persons

12. While welcoming the progress made to combat trafficking in persons (see para. 6 (c) above), human trafficking remains a matter of concern for the Committee, as the State party reportedly continues to be a destination country for foreign men and women trafficked for the purposes of forced labour and sex and a source of children trafficked within the country for the purpose of sex. The Committee notes that, despite the current situation, only a small number of trafficking cases have recently been brought forward under its anti-trafficking legislation (arts. 2, 12-14 and 16).

The State party should:

(a) **Vigorously enforce the existing legislative framework; promptly, thoroughly and effectively investigate cases of trafficking in persons and related practices; and prosecute and punish those responsible with appropriate penalties;**

(b) **Enhance international cooperation to combat human trafficking, including through bilateral agreements, and monitor the impact of such cooperation;**

(c) **Provide specialized training to public officials, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;**

(d) **Adopt effective measures to prevent and investigate acts of trafficking, prosecute and punish those responsible and conduct nationwide awareness-raising and media campaigns about the criminal nature of such acts;**

(e) **Provide effective remedy to all victims of the crime of trafficking;**

(f) **Provide the Committee with comprehensive and disaggregated data on the number of investigations carried out, prosecutions initiated and sentences handed down for human trafficking and on the provision of redress to the victims.**

Arrangements for the custody and treatment of persons deprived of liberty

13. Bearing in mind its previous concluding observations (see CAT/C/NZL/CO/5, para. 9) and the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its visit to the State party, the Committee is concerned at reports that, despite remedial measures taken by authorities, overcrowding remains a problem in many places of detention. The Committee is concerned at reports that, in a number of such places, the material conditions and health-care services, in particular mental health-care services, are inadequate. The Committee is concerned at provisions of the Corrections Amendment Act 2013 authorizing the mandatory strip-searching of prisoners in a broad range of circumstances. Finally, the Committee is concerned at information received that the rate of violence between prisoners and the rate of assaults of prisoners on guards is higher in the privately run Mount Eden Corrections Facility than in other comparable public correction facilities (arts. 2, 11 and 16).

The State party should strengthen its efforts to bring the conditions of detention in all places of deprivation of liberty in line with relevant international norms and standards, including the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, in particular by:

(a) **Continuing to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures;**

(b) **Ensuring that adequate mental health care is provided for all persons deprived of their liberty;**

(c) **Amending the Corrections Amendment Act 2013 to the extent required to remove inconsistencies with the relevant provision of the Convention.**

While taking note of the statement made by the representative of New Zealand that "contract-managed prisons must comply with the same domestic laws, international standards and obligations relating to prisoners' welfare and management as publicly managed prisons", the Committee recommends that the State party ensure that privately run places of detention fully comply with those laws, standards and obligations.

Indigenous people in the criminal justice system

14. While noting with satisfaction the efforts and subsequent measures taken by the State party to address the situation of indigenous people, including the prevention strategy entitled "Turning of the Tide" and the Creating Lasting Change Strategy 2011–2015, the Committee remains concerned at information received that indigenous people continue to be disproportionately affected by incarceration. The Committee is also concerned at information received that, while making up 15 per cent of the State party's population, Maori comprise 45 per cent of arrested individuals and over 50 per cent of prison inmates, and, moreover, that more than 60 per cent of female inmates are Maori (arts. 2, 11 and 16).

The State party should increase its efforts to address the overrepresentation of indigenous people in prisons and to reduce recidivism, in particular its underlying causes, by fully implementing the "Turning of the Tide" prevention strategy through the overall judicial system and by intensifying and strengthening community-based approaches with the involvement of all stakeholders and the increased participation of Maori civil society organizations.

Excessive use of seclusion in mental health facilities

15. While welcoming the adoption of the Mental Health and Addiction Service Development Plan 2012-2017, the aim of which is to eliminate the practice of secluding persons affected by mental health and addiction issues in the State party, and the commitment of the Ministry of Social Development to finish processing all historic abuse claims submitted to it by the end of 2020, the Committee is concerned at information received on the persistent seclusion of persons in mental health facilities for the purposes of punishing, disciplining and protecting, as well as for health-related reasons. The Committee notes that a significant number of victims have been secluded for more than 48 hours and that Maori are more likely to be secluded. The Committee is concerned at information that the State party continues to include, in new psychiatric facilities, cells specifically designed for solitary confinement. The Committee is also concerned that, according to information received from non-governmental sources, 60-70 per cent of people in detention have either a learning disability or a mental illness. The Committee notes that the State party failed to investigate or hold any individual accountable for the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice Hospital. The Committee also notes the lack of relevant statistical information (arts. 11, 14 and 16).

The State party should:

(a) **Use solitary confinement and seclusion as measures of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;**

(b) **Prohibit the solitary confinement and seclusion of juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison and in all health-care institutions, both public and private;**

(c) **Conduct prompt, impartial and thorough investigations into all allegations of ill-treatment in prisons and health-care institutions, both public and private; prosecute persons suspected of ill-treatment and, if they are found guilty, ensure that they are punished according to the gravity of their acts; and provide effective remedies and redress to the victims;**

(d) **Compile and regularly publish comprehensive and disaggregated data on solitary confinement and seclusion.**

Juvenile justice

16. Bearing in mind its previous concluding observations (see CAT/C/NZL/CO/5, para. 8), the Committee remains concerned at the gaps in the protection of juveniles in the State party's criminal justice system (arts. 11 and 16).

The State party should take the measures necessary to ensure the proper functioning of the justice system in compliance with international standards. In particular, the State party should:

(a) **Ensure full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Guidelines for the Prevention of Juvenile Delinquency;**

(b) **Ensure that juvenile detainees and prisoners under 18 are held separately from adults, in line with rules 13.4 and 26.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and rules 17, 28 and 29 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;**

(c) **Resort to alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.**

Use of electrical-discharge weapons (tasers)

17. While welcoming the establishment of the Police and Community Tactical Options Reference Group to liaise on issues relating to the use of force by the police and noting the information provided by the delegation that the use of electrical-discharge weapons is tightly regulated and controlled in each jurisdiction and is subjected to oversight and scrutiny processes, the Committee is concerned at reports of cases of inappropriate or excessive use of such weapons (arts. 2, 12-14 and 16).

The State party should ensure that electrical-discharge weapons are used exclusively in extreme and limited situations, where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons and by trained law enforcement personnel only. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibit their use on children and pregnant women. The Committee is of the view that electrical-discharge weapons should not form part of the equipment of

custodial staff in places of deprivation of liberty. The Committee recommends that the State party provide more stringent instructions to law enforcement personnel authorized to use electric-discharge weapons and to strictly monitor and supervise their use through mandatory reporting and reviews.

Non-refoulement and mandatory immigration detention

18. While welcoming the information provided by the State party on the comprehensive system put in place to assist asylum seekers, the Committee is concerned at bills introduced into Parliament that would reduce some of the existing statutory standards for the protection of asylum seekers and undocumented migrants. It is particularly concerned at the Immigration Amendment Act 2013, which, inter alia, allows the detention of "mass arrival groups" of asylum seekers for up to six months and at policies and practices currently applied to persons who arrive in the State party through irregular channels (arts. 2, 3, 11 and 16).

The State party should adopt the measures necessary:

(a) **To ensure full compliance with its obligations under article 3 of the Convention in respect of non-refoulement;**

(b) **To ensure that detention should be applied only as a measure of last resort, when determined to be strictly necessary, in a manner proportionate to each individual case and for as short a period as possible;**

(c) **To establish, in case it is necessary and proportionate that a person should be detained, statutory time limits for detention and access to an effective judicial remedy to review the necessity of the detention;**

(d) **To ensure that stateless persons whose asylum claims have been refused and refugees with adverse security or character assessments are not held in detention indefinitely, including by resorting to non-custodial measures and alternatives to closed immigration detention;**

(e) **To identify as early as possible all victims of torture among asylum seekers and other persons in need of international protection and provide them with priority access to the refugee determination procedure and to treatment for urgent conditions;**

(f) **To provide a thorough medical and psychological examination and report, considering the procedures set out in the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), by adequately trained independent health experts, with the support of professional interpreters, when signs of torture or trauma have been detected during personal interviews and, on that basis, provide access to immediate rehabilitation services;**

(g) **To provide regular training on the procedures established in the Istanbul Protocol to asylum officers and health experts participating in the asylum determination procedure, including training on detecting psychological traces of torture and on gender-sensitive approaches.**

Redress, including compensation and rehabilitation, for victims of torture

19. While welcoming the commitment of the State party to provide compensation to victims of historic claims of abuse, the Committee is concerned at the fact that victims have not been awarded with full redress, including compensation and rehabilitation, as prescribed by general comment No. 3 (2012) on the implementation of article 14 by States

parties. The Committee further notes that the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 restricts the circumstances in which the courts are able to award compensation to prisoners victim of acts that amount to torture and ill-treatment.

Recalling its general comment No. 3 (2012), the Committee recommends that the State party amend those provisions of the Prisoners' and Victims' Claims (Continuation and Reform) Amendment Act 2013 that might be inconsistent with the aim of the Convention. The State party should establish the legislative and structural framework necessary for ensuring that all victims of torture receive redress, including medical and psychological assistance, full compensation and the means for full rehabilitation.

Withdrawal of reservation to article 14

20. While noting the explanations provided by the delegation, the Committee is concerned that the State party has maintained its reservation to article 14 of the Convention, leaving at the discretion of the Attorney-General of New Zealand the right to award compensation to victims of torture, which is incompatible with the letter and spirit of the Convention, as well as with the State party's obligation to ensure the rights of victims of torture to fair and adequate compensation, including the means for as full a rehabilitation as possible (art. 14).

The Committee reiterates its previous recommendation (see CAT/C/NZL/CO/5, para. 14) and urges the State party to consider withdrawing its reservation to that article and ensure the provision of fair and adequate compensation through its civil jurisdiction to all victims of torture.

Follow-up procedure

21. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations contained in paragraph 9, concerning the national preventive mechanisms, paragraph 10, on the Independent Police Conduct Authority, and paragraph 15, on solitary confinement and seclusion in mental health facilities.

Other issues

22. The Committee invites the State party to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

23. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

24. The State party is invited to submit its next report, which will be its seventh periodic report, by 15 May 2019. For that purpose, the Committee will, in due course, transmit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.